

February 10, 1959

Honorable Gene B. McClellan  
House of Representatives  
Twenty-fourth Legislature  
Capitol Building  
Phoenix, Arizona

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ARIZONA ATTORNEY GENERAL

Dear Mr. McClellan:

Reference is made to your request for an opinion concerning the following:

May the City of Phoenix assess and collect City property taxes for the entire taxable year, commencing January 1st, on an area annexed to the City in the months of March or April of that year?

Because A.R.S. § 42-488 (A) provides as follows:

"The general city and town taxes levied or assessed under this article shall become due and delinquent, and shall attach to and become a lien on the property assessed at the same time as state and county taxes,"

it is necessary that we review the assessment and levy of state and county ad valorem real property taxes in the state.

A.R.S. § 42-312 (B) provides that the lien for taxes due for that taxable year shall attach on the first Monday in January of that particular year and shall not be satisfied or removed until the taxes, etc., are paid. While the lien for the taxes attaches on the first Monday in January, the payment of said taxes is not due and owing until the first Monday in November, for the first half, and the first Monday in May of the year following, for the second half. (A.R.S. § 42-310) This is so because the interim period between the attachment of the lien and the due date of the

taxes is taken up with the assessment, equalization, and levy of said taxes.

A.R.S. § 42-221 provides that the tax rolls should be made up by the county assessor between the first Monday in January and May 1 of that taxable year, and A.R.S. § 42-239 provides that they shall be completed on or before May 20 of that year. The period between May 20 and the third Monday of August is then taken up by various appeal procedures by taxpayers against the assessments set up by the county assessor on his tax rolls. (A.R.S. §§ 42-241, 42-243, 42-145) It is not until the third Monday in August that city and town taxes are assessed for the entire taxable year which commenced January 1 of the particular year, A.R.S. § 42-486 setting it forth as follows:

"A. The board of supervisors shall, on or before the third Monday in August each year, assess the amount of taxes certified to it as having been levied for city or town purposes, designating the amount which shall be levied for such purposes on each one hundred dollars of taxable property."

The taxation and assessment system of the State of Arizona is different than that of most other states because we, unlike they, have no specific date upon which ownership thereof determines the tax liability for the whole year. While the dates have been changed by amendment, our system is still the same as when our Supreme Court stated in the case of Aztec Land and Cattle Company v. County of Navajo (1905), 9 Ariz. 308, 80 P. 318, on page 310, as follows:

"It will be observed that our statutes provide that between the first Monday in February and the first Monday in June of each year the assessor shall list and assess the real and personal property subject to taxation, and that no definite day is fixed at which time such property shall be subject to assessment and taxation. In this respect our law differs from that of many, if not nearly all, of the states, where such definite day is fixed and established by law; and the numerous decisions in such jurisdictions holding that property acquired after such fixed day is not subject to taxation for that year have no direct application to the case before us."

The Aztec case is directly in point with the question involved herein because the question there was whether or not the County of Navajo could assess taxes for the entire taxable year 1903 upon lands which became taxable after the first Monday in February, 1903, the date of the statutory lien attachment, and prior to the completion of the tax rolls on the first Monday in June. This land had previously been owned by the United States Government, which of course was tax immune, and the land was not transferred to the Aztec Land and Cattle Company until April 1, 1903.

The court held such lands to be taxable for the entire year of 1903, stating on page 310 (Arizona Reports) as follows:

"Under our law, it is clearly the duty of the assessor, between the dates named in the statute, to assess property subject to taxation that he may find in the county; and, in the absence in the statute of any fixed date at which property then owned shall be assessed for a given year, it is his duty within that time to assess for that year all property subject to taxation, whether acquired prior or subsequent to the first day of February. Nor does the fact that the statute provides that the lien of the tax shall attach on the first day of February, while it may by custom afford a convenient date for the vendor and vendee to determine, as between themselves, who shall take the burden of the payment of the tax, make it, in the absence of such express provision as we have referred to, any less the duty of the assessor to assess, during the period while such assessment is in progress, all such property as he may find to be taxable and untaxed, though acquired by the owner subsequent to the date when the lien attaches. The property in question, therefore, though acquired by the appellant subsequent to February 1st, but prior to June 1st, and assessed prior to the last-mentioned date, was legally subject to taxation for that year." (Emphasis supplied.)

The Arizona case of Territory v. Ferrin (1905), 9 Ariz. 316, 83 P. 361, was the exact reverse of the Aztec case in that there the County of Coconino attempted

to tax the owner of lands which had been transferred to the federal government between the first Monday in February, the date of the lien attachment, and the first Monday in June, the date of the tax rolls being completed. The court held in that case that the owner could not be assessed the tax because on the date of the completion of the tax rolls he was not the owner thereof. Though he was the owner at the commencement of the taxable year, the court said, on page 320:

"There is another reason why this action must fail, at least as to the greater part of the lands involved. The secretary approved the abstracts of title, and, so far as the record discloses, the selection of the lieu lands, in April, 1903. Under the provisions of the laws of Arizona, the tax-rate is not fixed until the third Monday in August of each year, and the levy and assessment is not completed until the duplicate assessment-roll is prepared and certified, as provided by chapter 5 of title 62 of the Revised Statutes of Arizona of 1901. When in April, 1903, the secretary of the interior approved the abstracts of title to the lands, and, so far as the record shows, the lieu selections were made and approved, all had been done that even the appellant contends should be done to vest the full legal and equitable title in the United States. Lands acquired for public purposes during the period between the first and final steps of taxation are exempt from taxes levied during the year in which they are acquired. *Bannon v. Burnes*, (C. C.) 39 Fed. 892; *Gachet v. City of New Orleans*, 52 La. Ann. 813, 27 South. 348; *Buckhout v. City of New York*, 176 N.Y. 363, 68 N.E. 659. And this is true even where, as in this territory, the legislature has declared that a lien for taxes shall attach at a date prior to the time when the first steps are taken to subject the real estate to taxation. There can be no real or effective lien until the amount of the taxes is ascertained and assessed. 'In the nature of things, no tax or assessment can exist, so as to become an encumbrance on real estate, until the amount thereof is ascertained and determined.' *Black on Tax Titles*, sec. 189; *Dowdney et al v. Mayor etc.*, 54 N.Y. 186. And see *Gillmor v. Dale*, 27 Utah, 372, 75 Pac. 932. Under such provisions of law, when the rate of taxes is fixed and the amount determined and levied, the lien for such amount relates back and attaches as of the date specified in the statute." (Emphasis supplied.)

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The ruling of these cases is in line with the statement in McQuillin on Municipal Corporations, 3rd Ed., Vol. 2, § 7.48, page 403, as follows:

"Since all the powers which a municipal corporation is given by its charter, including the power of taxation, extend throughout its corporate limits, property annexed to a municipality is subject to taxation, other than for taxes for the current year, where the tax list is closed for such year."

The closing of the tax rolls on the first of May and its contents determine which lands shall be taxed from the first of January of the taxable year. The fact that land became annexed between the first of January and the closing of the tax rolls requires it be placed on the municipal roll. Once the assessment is ascertained and the levy made, the amount relates back and attaches as of the date of the lien to all property included on those tax rolls regardless of taxing jurisdiction on the lien date.

Very truly yours,

WADE CHURCH  
The Attorney General

STANLEY Z. GOODFARB  
Assistant Attorney General

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